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May 1, 1997

BY HAND DELIVERY

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, DC 20554

Re: Application by SBC Communications, Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Oklahoma (CC Docket 97-121)

Dear Mr. Caton:

Pursuant to the FCC's Public Notice DA97-753, released April 11, 1997, enclosed for filing in the above-referenced docket are the original and eleven copies of the "Comments of WorldCom In Opposition To SBC Application For InterLATA Authority In Oklahoma."

Please return a date-stamped copy of the enclosed (copy provided)

Respectfully submitted,

Linda L. Oliver

Linda L. Oliver
Counsel for WorldCom, Inc.

Enclosures

cc: Regina Keeney, Chief, Common Carrier Bureau
Court Clerk, Oklahoma Corporation Commission
ITS

Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Application by SBC Communications, Inc.	)	
Southwestern Bell Telephone Company,	)	CC Docket No. 97-121
and Southwestern Bell Communications	)	
Services, Inc. d/b/a Southwestern Bell	)	
Long Distance for Provision of In-Region,	)	
InterLATA Services in Oklahoma	)	

COMMENTS OF WORLDCOM, INC. IN OPPOSITION TO SBC APPLICATION FOR INTERLATA AUTHORITY IN OKLAHOMA

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COMMENTS OF WORLDCOM, INC. IN OPPOSITION TO SBC APPLICATION FOR INTERLATA AUTHORITY IN OKLAHOMA

WorldCom, Inc., by its attorneys, hereby submits its comments in opposition to the application of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance ("SBC") for authority to provide in-region interLATA services in Oklahoma filed on April 11, 1997, pursuant to Section 271 of the Telecommunications Act of 1996. 1/

SBC's application should be dismissed because SBC does not satisfy the threshold requirements of either "Track A" or "Track B" of Section 271(c). 2/ The Commission therefore need not and should not reach the issue of SBC's checklist compliance or the public interest test.

1/ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (hereafter "1996 Act" or "Act"), 47 U.S.C. § 271.

2/ WorldCom filed comments on April 28 in support of the ALTS April 23 Motion to Dismiss SBC's application.

SUMMARY

The Commission should dismiss SBC's application because SBC fails to meet the threshold requirements for filing either a Track A application or a Track B application. First, SBC plainly fails to meet Track A's requirements because no competitive entrant yet serves residential customers in Oklahoma at all, much less predominantly over the entrant's own facilities.

Second, SBC is ineligible to pursue Track B. The plain language of the statute, the structure of the Act, and the intent of Congress dictate that Track B is not available to BOCs that are unable to meet Track A's requirements. Rather, Track B is available only when, as Section 271 (c)(1)(B) provides, either (1) no carrier has requested interconnection; or (2) if carriers have requested interconnection, they have failed to negotiate in good faith or have failed to implement an interconnection agreement. SBC does not allege that any of these prerequisites to a Track B application exist in this case.

The FCC therefore must dismiss SBC's application on these threshold grounds, without reaching the question of SBC's competitive checklist compliance or the public interest test. The Commission must draw a hard line against attempts by SBC or any other BOC to eviscerate the framework of Section 271 by being allowed to pursue Track B after failing to meet the "competitive presence" test of Section 271(c)(1)(A). There is no need, and it would be a waste of the FCC's scarce resources, for the FCC to address checklist compliance or public interest issues in connection with an application that is so clearly premature.

If the FCC were to proceed to evaluate SBC's checklist compliance, however, the FCC would have to conclude that SBC is far from being able to claim compliance with the checklist. In these comments we identify only a few of the obvious deficiencies.

First, no actual, permanent prices have been established for SBC in Oklahoma that would comply with the requirements of Section 252(d). Second, SBC, by its own admission, is not yet actually providing every checklist item, and therefore fails to meet the threshold requirement of Section 271(c)(2)(B) that it "provide" every item. Third, SBC is not providing access to unbundled loops, and thus the FCC cannot determine that this item is met. Fourth, SBC has not demonstrated that its unbundled local switching element -- which it is not yet providing to any carrier -- satisfies the specific requirements of the Act and the FCC's rules. Fifth, SBC has not yet provided nondiscriminatory access to operations support systems as required by the Act and the FCC's rules.

Finally, if the FCC were to examine the public interest effect of entry by SBC, it would have to conclude that the public interest would be harmed. Premature entry by SBC into the interLATA market would have serious adverse consequences for consumer choice and competition in all markets -- local, long distance and full-service. The public interest also dictates that SBC not be allowed into the interLATA market absent implementation of a competitively neutral universal service program and true reform of interstate access charges.

I. THE SECTION 271 PROCESS IS CRITICAL TO THE SUCCESS OF THE PRO-CONSUMER GOALS OF THE 1996 TELECOMMUNICATIONS ACT.

Out of its recent merger with MFS Communications Company, WorldCom is positioned to be a future full service provider of local, long distance, international, and Internet services. Before the merger, WorldCom was the fourth largest provider of interexchange services, offering both retail long distance services to end users and wholesale network services to carriers. MFS was the nation's leading facilities-based competitive local exchange carrier. MFS also owned UUNet, a major Internet access company and provider of Internet backbone service. The combination of facilities-based networks, customer bases, and technological and marketing expertise of these three companies presages the full service market on the horizon.

WorldCom is uniquely positioned to take advantage of the opportunities presented by the 1996 Act to bring a wide range of choices for telecommunications and information services to customers everywhere. WorldCom's ability and that of others to provide competing local exchange and full service offerings depends entirely on the successful implementation by incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs) of the 1996 Act. The BOCs are the largest and most important players in this formula.

In particular, as dramatized in Missouri and Texas, 3/ WorldCom needs nondiscriminatory access to SBC's unbundled network elements, at cost-based rates, with the ability to combine those elements in any configuration with each other and with WorldCom's own facilities. WorldCom also needs the operational support systems that give it the practical, as well as the theoretical, ability to be a local service provider over SBC's network. As SBC's Section 271 application makes clear, the Act is not anywhere near being fully implemented in Oklahoma, and the opportunities the Act provides for competitive entry into the local market are not yet truly available.

It will be a relatively easy matter for SBC to add long distance service to its local customers. It can take advantage -- as it has already for its wireless and out-of-region activities -- of competition among at least four nationwide wholesale interexchange networks and an automated PIC-change process. That process has the capability of switching long distance carriers for more than 30 million customers annually. 4/ The local exchange market today stands in stark contrast. The FCC's goal should be to ensure that switching local carriers will be as easy as

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3/ WorldCom's affiliate MFS has entered into interconnection agreements with SBC in Missouri and Texas. The non-price terms in these agreements were negotiated; the pricing provisions were subject to arbitration, and the arbitration decisions are now on appeal.

4/ Motion of AT&T to be Reclassified as a Non-Dominant Carrier, Report & Order, 11 FCC Rcd 3271, 3300 (1995).

switching long distance providers is today, and that consumers everywhere will have real choices of local and full-service providers. 5/

The Commission must recognize that paving the road to real local competition will take time and effort on all sides. Once SBC is given authority to provide interLATA services, the limited incentive it now has to cooperate and devote the necessary resources to opening the local market to competition will disappear. This phenomenon has been illustrated by the conduct of GTE, which already is able to provide interLATA services and therefore has challenged virtually every FCC and state decision implementing the local competition portions of the 1996 Act. That the same would be true for SBC and the other BOCs has already been conceded by Ameritech's Chief Executive Officer, Richard Notebaert, who recently was quoted as saying that:

> "The big difference between us and them [GTE] is they're already in long distance. What's their incentive to cooperate?" 6/

By filing its Section 271 application at such an early stage in the implementation of the Act's interconnection provisions, and on such a meager

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5/ The FCC recognized the importance of this goal when it ordered incumbent LECs to switch a customer's local carrier as easily as its long distance carrier is switched today when the switch requires only a software change. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, FCC 96-325, pets. for review pending, Iowa Utilities Board v. FCC, No. 96-3321 et. al. (8th Cir., petition filed September 6, 1996). at ¶ 421 (rel. August 8, 1996) ("Interconnection Order").

6/ See "Holding the Line on Phone Rivalry, GTE Keeps Potential Competitors, Regulators' Price Guidelines at Bay," Washington Post, October 23, 1996, at C12.

showing of actual competitive activity, SBC has essentially turned this proceeding into a rulemaking on the specific narrow question of the availability of Track B. Given the tremendous consequences of this proceeding, the Commission must establish in no uncertain terms that Track B is available only in exceptional circumstances (which are not present here) and that interLATA entry will not be permitted until the requirements of the competitive checklist have been "fully implemented" and consumers have a genuine choice of local exchange carriers.

II. SBC HAS FAILED TO SATISFY THE COMPETITIVE PRESENCE TEST OF SECTION 271(C)(1)(A).

The Commission should dismiss SBC's application insofar as it purports to be filed under Track A of Section 271. Section 271(c)(1)(A) requires a BOC to demonstrate that all of the following conditions are satisfied: (1) that the BOC has entered binding interconnection agreements, approved by the state commission under Section 252, with one or more unaffiliated, competing carriers; (2) that such carriers are providing local exchange service (defined to exclude exchange access and cellular service) to business and residential subscribers; and (3) that the local exchange service provided by such carriers is offered "either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange facilities . . . ." 7/ Because SBC has failed to satisfy at least two of these criteria, its application therefore must be dismissed.

7/ 47 U.S.C. § 271(c)(1)(A).

As WorldCom explained in its recent comments on the ALTS motion to dismiss, Section 271(c)(1)(A) essentially constitutes a "reality" test. Joel Klein, the Acting Assistant Attorney General for the Antitrust Division, explained that the key to this test is a demonstration of "full-scale entry" by a competitor:

> Once we see successful full-scale entry, however, then we will have reason to believe that the local market is open to competition. This approach doesn't require the shift of any particular amount of market share. . . . Rather, using a metaphor that I've become quite fond of, we just want to make sure that gas actually can flow through the pipeline; and the best way to do that is to see it happen. 8/

To use Mr. Klein's analogy here, SBC claims that gas can flow through the pipeline, but the record demonstrates that it is not actually happening yet. It is also clear from the record that no residential customers in Oklahoma have a choice of local service providers (nor do most business customers). Until SBC can make such a demonstration, the Commission cannot conclude that the competitive presence test is satisfied.

SBC relies solely on its agreement with Brooks Fiber to demonstrate that it meets the four-part test under Section 271(c)(1)(A) described above. 9/ Brooks, however, has made clear that it does not provide or offer local exchange

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8/ "Preparing for Competition in a Deregulated Telecommunications Market" Speech by Joel I. Klein, Acting Assistant Attorney General, Antitrust Division, U.S. Department of Justice at 10 (March 11, 1997) ("Klein Speech").

9/ SBC Brief at 9, 12.

service to residential customers. 10/ The four Brooks employees with test circuits into their homes are not "subscribers" and have not ordered "service," of Brooks' choosing as required by Section 271(c)(1)(A). Rather, they are Brooks employees accepting service of Brooks' choosing free of charge under a testing program. 11/

It should go without saying that "customers" who are employees of the carrier cannot count as "subscribers" within the meaning of the Act. For this reason alone, the Commission can dismiss SBC's application for failure to meet Track A.

We take this opportunity, however, to address the question of the status of test customers under Section 271(c)(1)(A). Many requesting carriers will provide service initially on a test basis, because of the numerous potential problems in providing local exchange service for the first time. Thus, even if the test customers were not Brooks employees, they could not be counted as subscribers within the meaning of Section 271(c)(1)(A). By definition, test customers are people who are willing to have a company other than the SBC monopoly provide local service -- but only on an experimental basis. The willingness of real customers to abandon the "telephone company" for a competitor is essential to satisfaction of the

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10/ Affidavit of John C. Shapleigh, Executive Vice President, Brooks Fiber Properties, at 1 (submitted with ALTS Motion).

11/ Affidavit of John C. Shapleigh, Executive Vice President, Brooks Fiber Properties, at 1 (submitted with April 23 ALTS Motion to Dismiss); Letter from Edward J. Cadieux, Director-Regulatory Affairs, Brooks Fiber Properties, to Martin E. Grambow, VP & General Counsel, SBC Telecommunications, Attachment A at 2 (included as attachment to Shapleigh affidavit); Brooks OCC Comments at 2 (included as Attachment B to Shapleigh affidavit).

competitive presence test, because only when real customers show confidence in a new entrant -- including confidence in service quality, access to 911, and so on -- can the FCC conclude that they are true "subscribers."

There are other independent defects in SBC's showing under Section 271(c)(1)(A). For example, service to customers via resale does not constitute service over a carrier's "own facilities," as the statute's language makes plain. 12/ Section 271(c)(1)(A) requires an applicant to show that competitors are serving residential (not just business) customers "exclusively . . . or predominantly over their own telephone exchange service facilities." Given SBC's improper reliance on test residential customers, however, each of whom is employed by Brooks, the Commission need not and should not address this and other "Track A" issues raised by SBC's application in order to deny its application.

III. SBC IS INELIGIBLE TO PROCEED UNDER TRACK B IN OKLAHOMA.

As demonstrated in the preceding section, SBC utterly fails to satisfy the Track A "competitive presence" test. SBC claims, however, that if it fails to

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12/ 47 U.S.C. § 271(c)(1)(A). The Conference Report accompanying the Act goes out of its way to state that pure resale of BOC services does not constitute facilities-based service under Section 271(c)(1)(A). See Telecommunications Act of 1996, Conference Report, H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. at 146 (1996) ("Conference Report") at 148 ("the conference agreement includes the 'predominantly over their own telephone exchange service facilities' requirement to ensure a competitor offering service *exclusively through the resale of the BOC's telephone exchange service does not qualify* . . .") (emphasis added).

meet this test, it then becomes eligible to pursue a Track B application. 13/ We show in this section, as we did in our April 28 comments supporting the ALTS April 23 motion to dismiss, that SBC is not eligible to pursue Track B. 14/ Track B is available only when no carrier has requested interconnection with the BOC or when such a carrier has failed to negotiate in good faith or to carry out a negotiated implementation schedule. 47 U.S.C. § 271(c)(1)(B). SBC does not even allege that these conditions are present. 15/ Its application must therefore be dismissed under Track B as well.

It is of critical importance whether a BOC proceeds under Track A or Track B. 16/ Track A applications must be based on the BOC's actual experience.

13/ SBC Brief at 14.

14/ The discussion in this and the previous section is taken in large part from WorldCom's April 28 comments filed in support of the ALTS motion to dismiss.

15/ The record developed in this docket shows that a number of potential facilities-based competitors have requested and entered into Commission-approved agreements with SBC and there is no evidence that any of these carriers has negotiated in bad faith or failed to comply with a negotiated implementation schedule.

16/ As discussed further below, the Oklahoma Commission appears to have a misapprehension about the difference between Track A and Track B applications. The Commission appeared to believe that the standard for checklist review for Track A applications is that the BOC "provide" *or* "generally offer." Transcript of Proceedings, Application of Ernest G. Johnson, Director of the Public Utility Division, to Explore the Requirements of Section 271 of the Telecommunications Act of 1996, Cause No. PUD 970000064, April 25, 1997, at 28-29. The Commission apparently based its conclusion of SBC's Track A checklist compliance on this erroneous standard. Id. Its conclusion, if confirmed in its written decision, thus should not be afforded deference.

The Track A review process provides this Commission and the FCC the opportunity to review the implementation of the competitive checklist based on that actual experience, as well as requiring the applicant to show that there is some measure of local facilities-based competition in its state (the "competitive presence" test). Conversely, a Track B application appears to permit an applicant to rely solely on the SGAT to demonstrate its compliance with the 14 point competitive checklist. The SGAT is nothing more than a paper undertaking that provides no assurance that a competitor actually could use checklist items to provide competitive service.

A. SBC's Interpretation of Section 271(c)(1)(B) is Flatly Contrary to the Structure and Purpose of the 1996 Act.

The 1996 Act reflects a basic policy choice in favor of competition by all players in all telecommunications markets. The Act recognizes, however, that local exchange competition cannot develop unless incumbent local exchange carriers provide their competitors access to their ubiquitous networks, including the right to use individual unbundled network elements and combinations of such elements, at reasonable rates, terms, and conditions. 17/ Anticipating the ILECs' incentive and ability to create obstacles and delays in implementing these requirements, the Act creates the only incentive for BOCs to cooperate with their prospective competitors by conditioning the removal of the MFJ in-region interLATA restriction upon full compliance with the pro-competitive requirements listed in the Section 271(c)(2)(B) checklist.

17/ See, e.g., 47 U.S.C. § 251(c)(3).

Most significantly, the Act requires that BOC compliance with the competitive checklist must be tested by real world experience. Under Section 271(c)(1)(A), the BOC must actually be providing access and interconnection to a competing carrier that itself is actually providing local exchange service to residential and business customers. 18/ This statutory "reality test" is similar to the Commission's decision under its pre-existing authority that collocation must not only be offered, but must be "operational" (i.e., in use by competitors), before local exchange carriers would be allowed greater pricing flexibility. 19/ Thus, under the Act, implementation of the prerequisites to local competition is to be real, not merely theoretical, and must be tested by a competitor's actually using the BOC's access and interconnection offerings to provide local exchange service to residential and business customers.

The Act provides only a narrow exception to this "reality test" for whether a BOC has satisfied the local competition prerequisites. This exception, known as "Track B" and embodied in Section 271(c)(1)(B), recognizes the possibility that, in some states, no competing carriers might have requested interconnection within a timely period after the enactment of the Act, or that no such carrier is

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18/ 47 U.S.C. § 271(c)(1)(A). See Conference Report at 148 ("The requirement that the BOC 'is providing access and interconnection' means that *the competitor has implemented the agreement* and *the competitor is operational.*) (emphasis added). This point is discussed more fully in the next section of these comments.

19/ Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369,7451-58 (1992), rev'd in part on other grounds sub nom. Bell Atlantic v. FCC, 24 F.3d 1441 (D.C. Cir. 1994).

negotiating in good faith or is implementing an interconnection agreement in a timely manner.

As SBC concedes, numerous carriers have requested access and interconnection in Oklahoma. 20/ SBC nevertheless seeks to avoid having to satisfy the clear requirements of the "competitive presence test" of Section 271(c)(1)(A) by filing this application well before it can meet that test, and then asserting that it has a right therefore to file under Track B. SBC should not be permitted to escape its obligation to fully satisfy the Track A requirements.

B. The Language of the Statute and the Legislative History Confirm that SBC May Not Proceed Under Track B in Oklahoma.

A plain reading of the statutory language of Section 271(c)(1) confirms that Track B is available only under certain circumstances, none of which are present here. Specifically, to qualify under Track B, a BOC must obtain a state commission ruling (1) that no carriers have requested "access or interconnection" or, (2) that those who have requested interconnection have failed to bargain in good faith or to implement interconnection agreements. 21/ SBC has not obtained such a ruling, nor has it even alleged that either of these circumstances applies here. SBC is therefore ineligible to apply for interLATA authority under Track B.

20/ SBC Brief at 4-6. SBC does not allege that any carrier has failed to negotiate in good faith or to implement an interconnection agreement in a timely manner.

21/ 47 U.S.C. § 271(c)(1)(B).

SBC argues, however, that even if a carrier has requested interconnection within the specified statutory time frame, SBC nevertheless may pursue a Track B application. SBC's approach depends entirely upon a strained reading of the following phrase in Section 271(c)(1)(B): "no such provider has requested the access and interconnection described in subparagraph (A)." This phrase does not, as SBC argues, incorporate subparagraph (A)'s specific descriptions of what competing carriers must be doing for the BOC to pass the Track A "reality test" (the presence of predominantly facilities-based providers of local exchange service to residential and business subscribers). Rather, subparagraph (A) explicitly states that its test applies only "[f]or the purpose of this subparagraph" -- i.e., *not* for the purpose of subparagraph (B). SBC would contort the meaning of "such provider" in a way that would have the effect of negating the test incorporated in subparagraph (A).

Instead, the most natural reading of the phrase "no such provider has requested the access and interconnection described in subparagraph (A)" in Section 271(c)(1)(B), and the reading most consistent with the statutory scheme and the structure of Section 271, is that it means simply that no prospective local exchange competitor has submitted a request for access or interconnection.

The legislative history confirms that Congressional intent behind Section 271(c)(1)(B) contradicts SBC's interpretation of that provision. The definitions in Section 271(c)(1)(A) and (B) were among the hardest fought provisions in the entire 1996 Act, and there is ample discussion in the legislative record

confirming the interpretation discussed above. For example, the Conference Report states that:

> For purposes of new section 271(c)(1)(A), the BOC must have entered into one or more binding agreements under which it is providing access and interconnection to one or more competitors providing telephone exchange service to residential and business subscribers. The requirement that the BOC "is providing access and interconnection" means that the competitor *has implemented the agreement* and *the competitor is operational.* 22/

In a similar vein, the House Report on the predecessor to Section 271(c)(1)(A), which was virtually identical to the current version, stated that the existence of "a facilities-based competitor that is providing service to residential and business subscribers . . . . is the integral requirement of the checklist, in that it is the tangible affirmation that the local exchange is indeed open to competition." 23/ This clear Congressional commitment to the presence of facilities-based competitors as a prerequisite to BOC in-region interLATA entry directly contradicts SBC's argument that it may proceed under Track B in Oklahoma.

Nor may SBC pursue both Tracks under the same set of facts. The language of the Act and its legislative history demonstrate that the two tracks are mutually exclusive. Section 271(c)(1) establishes that a BOC "meets the requirements of this paragraph if it meets the requirements of subparagraph (A)

22/ Conference Report at 148 (emphasis added).

23/ H.R. Rep. No. 204, 104th Cong., 1st Sess. 76-77 (1995) ("House Report"). See Conference Report at 147 (stating that the adopted text "comes virtually verbatim from the House amendment").

[Track A] *or* subparagraph (B) [Track B] of this paragraph." Therefore, on its face, the statute indicates that Track A and Track B are mutually exclusive options. Moreover, the Conference Report paraphrases the statutory language by stating that the BOC must meet

> either of the following[:] pursuant to [subparagraph (A)], the presence of a facilities-based competitor; or pursuant to [subparagraph (B)], a statement of the terms and conditions the BOC would make available . . ., if *no provider* had requested access or interconnection within three (3) months prior to the BOC filing 24/

The use of the "either . . . or . . ." terminology excludes the notion advanced by SBC 25/ that a BOC could pursue both Track A and Track B simultaneously.

Under SBC's approach, "Track A" apparently would apply only in the context of a request for access and interconnection from an *existing* competitive local exchange carrier that is somehow supposed to be *already* providing service to residential and business customers predominantly over its own facilities *before* submitting such a request. 26/ As SBC states:

> To prevent interLATA entry under subsection (B), however, the requesting local exchange competitor may not simply anticipate building facilities and seek

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24/ Conference Report at 146 (emphasis added)(describing language in the House bill that was the predecessor to Section 271); see also id. at 147 (stating that the adopted text "comes virtually verbatim from the House amendment").

25/ See SBC Brief at 15 n.15.

26/ SBC Brief at 14-15 & n.15. SBC states that the Track B "route is available where no CLEC that is a qualifying, facilities-based telephone exchange competitor for purposes of subsection (A) 'has requested' access and interconnection." SBC Brief at 14, citing Section 271(c)(1)(B).

> interconnection in anticipation of that day. Rather, it must actually *be* "such provider" described in subsection (A). 27/

SBC's view of Section 271(c)(1)(B) is completely illogical. Competitive entrants do not emerge fully grown at birth, or upon arrival in a new market, and the Act did not expect them to do so. Rather, competitors need to be able to purchase interconnection and unbundled network elements *before* they can provide local exchange service, and some time interval inevitably will be required from the time of the request to the reaching of an agreement to the implementation of the agreement to the actual provision of local exchange service. The structure of Section 271 (c)(1) recognizes this reality. As the Conference Report observes, the competitors described in Section 271(c)(1)(A) are only *potential* competitors at the time of requesting interconnection:

> [I]t is important that the Commission rules to implement new section 251 be promulgated within 6 months after the date of enactment, so that *potential* competitors will have the benefit of being informed of the Commission rules in requesting access and interconnection before the statutory window in new section 271(c)(1)(B) shuts. 28/

Moreover, as ALTS correctly points out, 29/ the caveats in Section 271(c)(1)(B) -- failure to negotiate in good faith and failure to stick to an agreed-upon implementation schedule -- are proof that Congress expected that negotiation and

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27/ SBC Brief at 14 (emphasis added; citations omitted).

28/ Conference Report at 148-49.

29/ ALTS Motion at 5.

implementation of agreements would take time. SBC would short-circuit this entire statutorily-prescribed process. 30/

30/ The full absurdity of SBC's interpretation of "such provider" in Section 271(c)(1)(B) is revealed by examining the legislative roots of Section 271(c)(1). That section is derived from Section 245(a)(2) of the version of H.R. 1555 that was adopted by the House Committee on Commerce. Pursuant to that version, a BOC was required to show (A) that it was providing access and interconnection to an "unaffiliated competing provider of telephone exchange service that is comparable in price, features, and scope and that is provided over the competitor's own network facilities to residential and business subscribers," or (B) that "no such provider had requested such access and interconnection . . ." H.R. 1555 (as reported to the House by the House Committee on Commerce, May 15, 1995). On the House floor, the first part of this test was modified to the form substantially found in the Act and the second part was left unchanged; both were subsequently adopted virtually unchanged by the Committee of Conference.

Applying SBC's interpretation of the term "such provider" to this earlier version of the legislation, a BOC could have used Track B if it had not received a request for access and interconnection from a competitor with a fully operational network and offering services that are comparable in price, features and scope to that of the BOC. Clearly this is not what the Commerce Committee intended, because the Committee knew that no local competitor would, or could, have met the requirements of Track A within the time frames of Track B.

Significantly, even Representatives Dingell and Tauzin did not believe that the Commerce Committee language would simply result in the BOCs proceeding under Track B. Instead, they expressed concern that the BOC would have to "wait to apply for long distance relief until some competitor has duplicated the Bell Company's network and offers service of comparable 'scope' throughout the service territory of the [BOC]." House Report at 210. (This earlier expression of concern by Representative Tauzin undermines his later statement, quoted by SBC in its Brief at 14, regarding the meaning of the term "such provider." See 141 Cong.Rec. H.8425, H8458 (daily ed., Aug. 4, 1995)(Statement of Rep. Tauzin).)

Just as Representatives Dingell and Tauzin stated was the case with the original language, under the language ultimately enacted, once a BOC has received a request for interconnection, it must wait to apply for long distance relief until some competitor is providing both residential and business service either exclusively or predominantly over its own facilities. The BOC does not have the option under such circumstances of proceeding under Track B.

SBC's interpretation of Section 271(c)(1)(B) ignores the whole point of Section 271 -- to create the strongest possible incentive for BOCs to cooperate in facilitating local competition before allowing them to provide in-region interLATA service.

C. SBC's Interpretation of Section 271 Would Read the Competitive Presence Test of "Track A" Out of the Act.

SBC's interpretation of Section 271(c)(1)(B) is inconsistent not just with the plain language of the Act and with its structure and purpose, it also must be rejected because it would read Track A's competitive presence test right out of the Act. Put differently, SBC's reading of the "Track B" exception would broaden that exception so far that it would swallow the "Track A" rule, and would obliterate the "reality test" for the presence of facilities-based competitors embodied in Track A.

SBC contends, in essence, that a BOC can pursue the Track B route whenever it has failed the Track A test. Under this illogical interpretation, the farther a BOC is from encouraging local competition to develop, the easier it would be for the BOC to gain interLATA entry. By frustrating the ability of requesting carriers to become facilities-based local exchange service providers, SBC could reap the reward of being permitted to prove its checklist compliance merely by pointing to a paper offering -- the statement of generally available terms ("SGAT") -- rather than having to demonstrate real world compliance through access and interconnection provided to real competitors. Congress could not have intended

that Section 271 would have such a perverse meaning. SBC's argument ignores the fundamental *quid pro quo* underlying Section 271 -- that compliance with the preconditions to local competition, verified by the presence of an operational facilities-based competitor, must occur *prior to* interLATA entry.

The Commission should act decisively to protect the integrity of Track A under Section 271. Once any carrier has presented a BOC with a bona fide request for interconnection, unbundled elements, or other Section 251/252 offerings, with a good faith view toward using that interconnection or other offering to provide local exchange service as described in Section 271(c)(1)(A), the Commission must ensure that the Track A standard, and *not* the narrow Track B exception, will be used to judge whether operational local exchange competition has been implemented in the real world.

IV. SBC'S APPLICATION MUST BE DISMISSED AS PREMATURE BECAUSE NO ACTUAL PRICES YET HAVE BEEN ESTABLISHED TO SATISFY SECTION 252.

To satisfy the competitive checklist, a BOC must offer interconnection, unbundled network elements and resale of services at prices that comply with the requirements of Sections 251 and 252(d). This means that all prices must be just, reasonable and non-discriminatory (under Section 251) and that prices for interconnection and unbundled elements must be cost-based and prices for wholesale services must be based on the retail rate less avoided costs (under Section 252(d)).